

STATE OF MICHIGAN
COURT OF APPEALS

AMERICAN TOWING, INC. and JOHN T.
FINLEY,

UNPUBLISHED
May 16, 2006

Plaintiffs-Appellees,

v

DOUGLAS ROGERS,

No. 259809
Clinton Circuit Court
LC No. 04-009708-NZ

Defendant-Appellant.

Before: White, P.J., and Fitzgerald and Talbot, JJ.

PER CURIAM.

Defendant appeals as of right from a circuit court order denying his motion for summary disposition based on governmental immunity. We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The trial court's ruling on a motion for summary disposition is reviewed de novo. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000). Governmental immunity is a question of law that is also reviewed de novo on appeal. *Pierce v Lansing*, 265 Mich App 174, 176; 694 NW2d 65 (2005).

"A judge, legislator, and the elective or highest appointive executive official of all levels of government are immune from tort liability for injuries to persons or damages to property if he or she is acting within the scope of his or her judicial, legislative, or executive authority." MCL 691.1407(5). The parties do not dispute that defendant, as the township's police chief, qualified for absolute immunity if acting within the scope of his executive authority.

The phrase "scope of authority" means "[t]he reasonable power that an agent has been delegated or might foreseeably be delegated in carrying out the principal's business." *Backus v Kauffman (On Rehearing)*, 238 Mich App 402, 409; 605 NW2d 690 (1999), quoting Black's Law Dictionary (7th Ed), p 1348. If one is an official, factors to be considered include "the nature of the specific acts alleged, the position held by the official alleged to have performed the acts, the charter, ordinances, or other local law defining the official's authority, and the structure and allocation of powers in the particular level of government." *Marrocco v Randlett*, 431 Mich 700, 711; 433 NW2d 68 (1988).

A township ordinance and a police department policy provides that wrecker services required by officers are to be assigned on a rotational basis. The ordinance gives defendant sole discretion to deviate from the regular rotational schedule if, in his opinion, doing so “is necessary for the protection of the health, safety or welfare of the” township’s citizens. Defendant restricted (but did not eliminate) American Towing’s service calls after plaintiff Finley was accused of sexually harassing a woman who required his services. In taking such action, defendant acted within the scope of his authority under the township ordinance. The question whether he may have acted with an ulterior, malicious purpose would not defeat his right to immunity. *American Transmissions, Inc v Attorney Gen*, 454 Mich 135, 143; 560 NW2d 50 (1997); *Armstrong v Ypsilanti Charter Twp*, 248 Mich App 573, 594; 640 NW2d 321 (2001). Therefore, defendant was entitled to absolute immunity under MCL 691.1407(5), and the trial court erred in denying his motion for summary disposition.

Reversed.

/s/ E. Thomas Fitzgerald

/s/ Michael J. Talbot